

1 Honorable Timothy W. Dore
2 Hearing date: July 3, 2019; 9:30 a.m.
3 Hearing Place: Room 8106, 700 Stewart Street, Seattle, WA 98101
4 Responses due by: June 26, 2019; by 4:30 p.m.
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8 IN THE UNITED STATES BANKRUPTCY COURT FOR THE
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 In re:) Chapter 7
11 CESAR SANCHEZ-GUZMAN,) Bankruptcy No. 14-10141
12 f/k/a Cesar Sanchez, f/k/a Cesar Guzman,) TRUSTEE'S MOTION FOR AN ORDER
13 Debtor(s).) APPROVING COMPROMISE OF CLAIM
14 _____)

15 COMES NOW the trustee, Nancy James, through counsel The Livesey Law Firm, and Rory
16 C. Livesey, and moves this court for an order approving the trustee's compromise of a claim.

17 The details of the compromise can be summarized as follows:

18 The debtor filed a Chapter 7 bankruptcy petition on January 9, 2014. He received a
19 discharge and the case was closed on April 21, 2014. The case was reopened on May 31, 2018.

20 After the case closed the debtor commenced two lawsuits in King County Superior Court
21 against Bryan Singer ("Singer"): the matter of *Cesar Sanchez-Guzman v. Bryan Singer*, filed on
22 December 7, 2017, under case number 17-2-31571-1 SEA, and the matter of *Cesar Sanchez-Guzman*
23 v. *Bryan Singer*, filed in King County Superior Court on May 7, 2018, under case number 18-2-
24 11577-9 SEA. The two lawsuits (collectively the "King County Actions") assert identical claims
25 for damages arising out of an alleged assault by Singer in 2003. Guzman's claim against Singer
was an asset of Guzman's bankruptcy estate upon the date of the filing. However, as the claim was
not listed on the debtor's bankruptcy schedules it was not abandoned by operation of law when the
case closed. The claim remains an asset of the bankruptcy estate and is subject to administration

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1 by the trustee. The debtor amended his schedules to list the King County Actions and has claimed
2 exemptions totaling \$34,486. There are no objections to the claim of exemption.

3 Pending approval by the bankruptcy court, the trustee and Singer have entered into a
4 settlement. Under the terms of the settlement Singer will pay to the estate \$150,000. Upon payment
5 of the funds to the trustee, the King County Actions will be dismissed with prejudice. Additionally,
6 the parties will enter into a general release of all claims that can be asserted, whether known or
7 unknown. *See* exhibit to Declaration of Nancy James.

8 The court considers four factors in deciding to approve a settlement. They are (a) the
9 probability of success in resolving the claim; (b) the difficulties, if any, to be encountered in the
10 matter of collection; (c) the complexity of resolving the claim and the expense, inconvenience and
11 delay involved; and, (d) the paramount interest of the creditors.

12 The trustee has determined that this settlement is in the best interest of the estate. With
13 regard to the above factors, the trustee does not believe that there would be any significant difficulty
14 in collecting an ultimate judgment from Singer. Consequently, that element did not factor heavily
15 in the trustee's determination.

16 As for the first and third factors, the outcome of the King County Actions, if litigation were
17 to continue, is uncertain. The second King County complaint was filed just before the bankruptcy
18 was reopened and no discovery has taken place. As with all litigation, the outcome of the King
19 County Actions cannot be predicted with certainty. Therefore, in recommending this settlement, the
20 Trustee has to engage in some conjecture. In this instance, in addition to the inherent risks of
21 litigation, there is a threshold question regarding the statute of limitations under RCW 4.16.080(2).
22 The alleged assault took place approximately 14 years before the first of the King County Actions
23 was filed in King County. If the claim against Singer is barred by the statute of limitations, there
24 would be no recovery for the estate. Singer asserts that Guzman failed to allege any factual basis
25 in the King County Actions to justify the application of the so-called "delayed discovery" rule under
RCW 4.16.340(1)(c). Singer also asserts that if litigation in the King County Actions were to

1 proceed, the evidence would show that Guzman claims to have discovered the extent and cause of
2 his alleged injuries more than a decade ago, after he attained the age of majority. Further, there is
3 no evidence to support the allegation that Singer ever attended a party on a yacht with Guzman –
4 something that Singer denies ever occurred. The trustee has determined that those issues favor
5 settlement.

The final element, the paramount interest of creditors, strongly supports the settlement. The claims filed in this case total just under \$61,000. The settlement should provide sufficient funds to pay the debtor's exemption, the costs of administration and the claims in full. There should be at least nominal funds being returned to the debtor as surplus at the end of the case. Moreover, almost the entirety of the creditor claims are made up of student loans. The student loans are not covered by the debtor's discharge. The settlement will relieve the debtor of a significant nondischargeable debt.

13 As part of the settlement, the parties are to dismiss the King County Actions with prejudice.
14 Towards that end the trustee is requesting authority to substitute in as the plaintiff in the King
15 County Actions.

16 WHEREFORE, the trustee prays for an order approving the compromise with Bryan Singer.
17 RESPECTFULLY SUBMITTED this 12th day of June, 2019.

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/S/ *Rory C. Livesey*

Rory C. Livesey, WSBA #17601
Attorney for Trustee

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